



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,426	01/11/2006	Juan, Maria Cruz-Sagredo Garcia	CRUZ-SAGREDO GARCIA, J-1	8862
25889	7590	10/21/2008	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			MUROMOTO JR, ROBERT H	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			10/21/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/564,426

Applicant(s)CRUZ-SAGREDO GARCIA, JUAN,
MARIA**Examiner**

BOBBY H. MUROMOTO JR

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-20 are rejected under 35 U.S.C. 102(b) as being anticipated by
Brickman US patent 2,660406.

Claim 1 recites "Sclerophyllic mesh", which has been referenced as a synonym for "barbed wire" by applicant in the instant specification.

Brickman clearly discloses a barbed wire and therefore "Sclerophyllic mesh" as defined by applicant.

Brickman clearly discloses the term 'electrowelded' as this is a product by process limitation. The Brickman mesh recites 'welded' wire. The MPEP has established that once the examiner has shown an essentially identical product that a 102 or 103 rejection is proper and that the burden has shifted to applicant to prove that the recited process steps result in a different structure than that of the prior art.

Figures clearly show barbs (sharp points) on the mesh as claimed. Brickman discloses an embodiment welding the barbs to the welded wires as in claims.

Figure 10 and 11 show an embodiment where the barbs are joined to the wire intersections 38, extend obliquely and perpendicularly (since no point of reference is given to determine the angles), curved and straight barbs in figure 7, fence mesh shapes other than square in figure 10, barbs from one side in figure 7 and from both sides in figure 3, as claimed.

Further figures 2, 3, 5, 6 and 7 all clearly show welded cross wires (longitudinal wires 10, 16; intersecting with transverse wires (4, 14) that at the intersections have barbs (12, 20, 22, 24) as claimed.

Figures 2, 3, 5, 6, and 7 all clearly show various claimed barb arrangements.

Figure 2 and 3 clearly show barbs 12 extending in two different directions, i.e. two sides of the mesh as claimed.

Figures 8 and 9 clearly show rectangular mesh, which is not a square as newly claimed.

Response to Arguments

Applicant's arguments filed 9/29/2008 have been fully considered but they are not persuasive.

Applicant has not overcome the burden of evidence with regard to product-by-process limitation "electrowelded" resulting in a materially different product than a "welded" mesh.

Arguments regarding barbs not being at 'intersections' is clearly in error. In addition to rejection above to further illustrate that barbs are at welded intersections, the examiner cites directly from the patent:

"The cross wires are cut on a bias as shown at 10 in figure 1 and the cut wires are bent to form a substantially V-shaped barb."

So if the wires are welded into fabric and then the cross wires are cut to form the barb, then the barbs are without a doubt formed at the intersections as claimed.

Subsequently, the patent states, "Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in figures 2 and 3."

Since no point of reference is claimed for determining the "two sides of the mesh", the oppositely oriented barbs do extend to the claimed "two sides of the mesh".

Since these are the arguments presented and newly amended claims are also disclosed by the prior reference the rejection remains and is considered to be proper.

Conclusion

This is a RCE of applicant's earlier Application No. 10/564,426. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3765

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY H. MUROMOTO JR whose telephone number is (571)272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000

/Robert H Muromoto, Jr./
Primary Examiner, Art Unit 3765